

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

LENNY SHOULTZ,

Civil 04-1566 JRT/FLN

Plaintiff,

v.

O R D E R

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

LIONEL H. PEABODY, 600 Board of Trade Building, 301 West First Street, Duluth, Minnesota 55802, for plaintiff.

LONNIE F. BRYAN, Assistant United States Attorney, 600 United States Courthouse, 300 South 4th Street, Minneapolis, Minnesota 55415, for respondents.

Based upon the Findings of Fact, Conclusions of Law, and Recommendation by United States Magistrate Judge Franklin L. Noel dated August 5, 2005, all the files and records, and no objections having been filed to said Report and Recommendation,

IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment [Docket No. 8] is DENIED;
2. Defendant's motion for summary judgment [Docket No. 12] is DENIED; and
3. The Commissioner's decision is REVERSED and the case is REMANDED for further administrative proceedings consistent with Magistrate Judge Noel's Report and Recommendation. On remand, the Commissioner is directed to fully develop the record to determine the extent of the Plaintiff's physical ability to stand, and his mental ability to

perform competitively.

DATED: August 25, 2005.
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge